

Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, : Case No. 01-CV-769
vs. : (Judge S. A. Spiegel)
 :
CITY OF CINCINNATI, : VOLUME I
et al., :
 :
Defendants. :

Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the

plaintiffs for cross-examination, pursuant to the

Federal Rules of Civil Procedure, taken before me,

Wendy Davies Welsh, a Registered Diplomate Reporter
and Notary Public in and for the State of Ohio, at

the offices of Helmer, Martins & Morgan Co. LPA,

1900 Fourth & Walnut Centre, 105 East Fourth Street,

Cincinnati, Ohio, on Thursday, November 6, 2003, at

2:43 p.m.

Owensby, et al. vs. City of Cincinnati
November 6, 2003

DAVID WILLIAM HUNTER, JR.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan Jr., Esq. Helmer, Martins & Morgan Co. LPA 5 Suite 1900, Fourth & Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. 8 The Helbling Law Firm, L.L.C. 3672 Springdale Road 9 Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, 11 Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq.. 13 Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower 14 One West Fourth Street Cincinnati, Ohio 45202-3688 15 Phone: (513) 381-9200</p> <p>16 On behalf of the Defendants City of Cincinnati, 17 Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geiler, Esq. Assistant City Solicitor 19 and Julie F. Bissinger, Esq. 20 Chief Counsel Department of Law Room 214, City Hall 21 801 Plum Street Cincinnati, Ohio 45202 22 Phone: (513) 352-3346</p> <p>23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8 - - -</p> <p>9</p> <p>10 I N D E X</p> <p>11 Examination by: Page</p> <p>12 Mr. Martins 5</p> <p>13 - - -</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 Page</p> <p>17</p> <p>18 Deposition Exhibit 6A 89 Deposition Exhibit 54 29 19 Deposition Exhibit 55 43 Deposition Exhibit 56 62 20 Deposition Exhibit 57 64 Deposition Exhibit 58 67</p> <p>21 - - -</p> <p>22 23 24</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and 3 Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of the David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 9 114 East 8th Street Suite 400 10 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk 14 Helmer, Martins & Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17 - - -</p> <p>18</p> <p>19 S T I P U L A T I O N S</p> <p>20</p> <p>21 It is stipulated by and among counsel for the 22 respective parties that the deposition of DAVID 23 WILLIAM HUNTER JR., a witness herein, called by the 24 plaintiffs for cross-examination, pursuant to the</p>	<p style="text-align: right;">Page 5</p> <p>1 VIDEOGRAPHER: Time is 2:43 p.m. The date 2 is November the 6th. The year is 2003. 3 If you'd please swear the witness, ma'am. 4 DAVID WILLIAM HUNTER JR. 5 being by me first duly cautioned and sworn, deposes 6 and says as follows: 7 VIDEOGRAPHER: We're on the record, Mr. 8 Martins. This is videotape number 1, sir. 9 CROSS-EXAMINATION 10 BY MR. MARTINS: 11 Q. Sir, would you state for the record your 12 full name, please. 13 A. David William Hunter Jr. 14 Q. And your age? 15 A. 36. 16 Q. Date of birth? 17 A. 5/20/67. 18 Q. What is your height? 19 A. 5' 7." 20 Q. And on November 7th of 2000 what was your 21 weight? 22 A. Approximately 175. 23 Q. Have you ever had your deposition taken 24 before?</p>

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<p>1 letting them know that we were there. 2 Q. How -- how far was he from you when he 3 said that? 4 A. About, hmm, maybe from here to that wall 5 (indicating). 6 Q. What, ten feet? 7 A. Oh, more than that. 8 Q. More? 9 A. Maybe -- 10 Q. 20 feet? 11 A. Maybe. Maybe 20 feet. I don't know 12 exactly. 13 Q. All right. When you had walked up to Mr. 14 Owensby, put your arm -- your left hand on his left 15 shoulder, around him, when you were talking to him, 16 were you looking at him? 17 A. Directly at him, yes. 18 Q. Did you notice if he had any facial hair? 19 A. If he did, it was like real light. I 20 don't remember having like a full beard or full 21 mustache or anything. 22 Q. Did he have the -- did he have -- how was 23 his hair? Was it in dreadlocks, was it short-cut? 24 How -- how was it?</p>	<p>1 A. Yes. 2 Q. -- on that day? 3 A. Yes. 4 Q. Do you see that with respect to Jaysen 5 Hill he is charged with criminal trespass and an 6 open container? 7 A. Yes. 8 Q. Is there any reason why there's no charge 9 of trafficking -- 10 A. Yes. 11 Q. -- or any kind of drug activity? 12 A. Yes. 13 Q. Why? 14 A. Because we didn't recover the drugs. 15 Q. Did you recover any money, any large sums 16 of money on these people out of these drug deals? 17 A. I didn't. 18 THE REPORTER: I'm sorry? 19 THE WITNESS: I did not. 20 Q. Do you know whether Officer Jorg did? 21 A. Not to my knowledge he didn't. 22 Q. So based on what you found on these 23 individuals -- well, let's talk about the second 24 one. Mr. Nixon is cited with criminal trespass.</p>
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<p>1 A. Like a short afro. 2 Q. At that point, as I understand your 3 testimony, you then return to Officer Jorg, tell him 4 what happened, right? 5 A. Uh-huh. Yes. 6 Q. And maybe -- maybe you've already answered 7 this, but do you recall whether or not Officer 8 Walker joined you and Officer Jorg? 9 A. I don't recall if he came back over there. 10 Q. Do you recall who of the two people that 11 were arrested, who was cited, their -- their names? 12 A. I don't remember their names. 13 Q. Let me show you -- let me show you what's 14 previously been marked as Exhibit 6. These are 15 two -- Exhibit 6 are two arrest and investigation 16 reports. The first one is for a Jaysen Hill and the 17 second is for a Jarvis Nixon. 18 You see the arrest location is the Sam's 19 Carry Out address of 2092 Scymour Avenue and the 20 arresting officer is Jorg, with your name also 21 listed. Do you see that? 22 A. Yes. 23 Q. Are these the two individuals that Officer 24 Jorg arrested --</p>	<p>1 Same thing, there were no -- no drugs and no large 2 sums of money found, correct? 3 A. That's correct. 4 Q. Based on what you found at the scene when 5 you got there, there was no evidence of drug 6 activity taking place, was there? 7 A. Are you talking about after the fact? 8 Q. When -- when you're -- based on the arrest 9 and what you found on the person of these 10 individuals. 11 A. Okay. What we observed to put us there 12 went with the two that got away. 13 Q. Okay. That's what you believe? 14 A. That's what I believe. 15 Q. Let me show you what I'm going to mark as 16 Exhibit 6A. 17 (Deposition Exhibit 6A was marked for identi- 18 fication.) 19 Q. You see Exhibit 6A is an arrest and 20 investigation report for one Dominic Peterson, same 21 location, same date, same time. And the person is 22 searched by Officer Walker, and this person is 23 charged with criminal trespass. Was Mr. Peterson 24 also involved in this?</p>

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Wendy Davies Welsh, a Registered Diplomate Reporter
and Notary Public in and for the State of Ohio, at
the offices of Helmer, Martins & Morgan Co. LPA,
1900 Fourth & Walnut Centre, 105 East Fourth Street,
Cincinnati, Ohio, on Thursday, December 4, 2003, at
10:11 a.m.

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December 4, 2003

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<p>Page 108</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. Helmer, Martins & Morgan Co. LPA Suite 1900, Fourth & Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 3672 Springdale Road Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq. Rendigs, Fry, Kieley & Dennis 900 Fourth & Vine Tower One West Fourth Street Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200</p> <p>15 On behalf of the Defendants City of Cincinnati, Darren Sellers, and Jason Hodge:</p> <p>17 Geri Hernandez Geiler, Esq. Assistant City Solicitor Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>Page 110</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8 I N D E X</p> <p>9 Examination by: Page</p> <p>10 Mr. Martins 111, 277</p> <p>11 Mr. Hardin 258</p> <p>12 - - -</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 85 Page 15 Deposition Exhibit 86 120 16 Deposition Exhibit 87 131 17 Deposition Exhibit 88 152 18 Deposition Exhibit 89 219 19 Deposition Exhibit 90 221 20 Deposition Exhibit 91 234 21 Deposition Exhibit 92 236 22 Deposition Exhibit 93 238 23 Deposition Exhibit 94 244 24 Deposition Exhibit 95 245 Deposition Exhibit 96 250</p>
<p>Page 109</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellman and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 915 Cincinnati Club Building 30 Garfield Place Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 114 East 8th Street Suite 400 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk</p> <p>14 Helmer, Martins & Morgan Co., L.P.A.</p> <p>15 Roger Owensby Senior</p> <p>16 Brenda Owensby</p> <p>17 Shawn Owensby</p> <p>18 - - -</p> <p>19 S T I P U L A T I O N S</p> <p>20</p> <p>21 It is stipulated by and among counsel for the 22 respective parties that the deposition of DAVID 23 WILLIAM HUNTER JR., a witness herein, called by the 24 plaintiffs for cross-examination, pursuant to the</p>	<p>Page 111</p> <p>1 DAVID WILLIAM HUNTER JR. 2 being by me previously duly cautioned and sworn, 3 deposes and says as follows:</p> <p>4 VIDEOGRAPHER: Time is 10:11 a.m. The 5 date is December the 4th. The year is 2003. 6 We're on the record, sir.</p> <p>7 CONTINUED CROSS-EXAMINATION</p> <p>8 BY MR. MARTINS:</p> <p>9 Q. Officer Hunter, we're picking up where we 10 left off after November 6, your first couple hours 11 of your deposition. Remind you that you are still 12 under oath. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Have you talked with anyone 15 about your deposition on November 6th between 16 November 6th and today?</p> <p>17 A. No, besides my attorney.</p> <p>18 Q. Okay. Have you discussed the facts of the 19 Owensby case with anyone between November 6th and 20 today?</p> <p>21 A. No.</p> <p>22 Q. I want to direct your attention now to 23 November 7, 2000. I understand in the -- sometime 24 on that day you received an MTD message request for</p>

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<p style="text-align: right;">Page 164</p> <p>1 length of Officer Jorg's arm was the middle of Mr. 2 Owensby's forehead? 3 A. Probably right -- probably right about, 4 yeah, I guess, the elbow. 5 Q. In the -- in the elbow? 6 A. In the elbow part. 7 Q. So Officer Jorg leans back, and in leaning 8 back, then he's pulling Mr. Owensby's head back 9 also. 10 A. Yes. 11 Q. Correct? 12 A. Uh-huh. 13 Q. Did Mr. Owensby say anything in response, 14 when Officer Jorg is leaning back and pulling his 15 head back? 16 A. No. 17 Q. Did Officer -- did Mr. Owensby make any 18 sound? Regardless of whether he said something, was 19 there a groan or a -- an exhale or anything like 20 that? 21 A. When I sprayed him with the Mace, he 22 groaned. 23 Q. I'm talking -- okay. 24 A. Oh. I'm sorry.</p>	<p style="text-align: right;">Page 166</p> <p>1 A. I'm sorry. Yes. 2 Q. Okay. So Officer Jorg pulls his head 3 back. You have your Mace. What do you do? 4 A. I sprayed him. 5 Q. How far were you from Mr. Owensby when you 6 administered the Mace? 7 A. I was point blank, right there in his 8 face. Right -- 9 Q. Okay. 10 A. I mean, right there. 11 Q. The distance of -- of the canister from 12 his eyes? 13 A. Six inches maybe. 14 Q. And did you spray once, more than once? 15 A. Hmm. Hmm. I think twice. 16 Q. What area of his face did you spray? 17 A. The eyes and the nose. 18 Q. At that point did you -- were you looking 19 when you were spraying it? 20 A. Yes. 21 Q. Did you notice whether or not Mr. Owensby 22 was bleeding? 23 A. Hmm. I think he was. I think he was. 24 Q. Where was he bleeding?</p>
<p style="text-align: right;">Page 165</p> <p>1 Q. I'm talking before. 2 A. Before that? No. 3 Q. When -- when -- when Jorg leans back and 4 pulls his head back, did -- did Mr. Owensby make any 5 sound? 6 A. No, not that I remember. No. I don't 7 remember that. 8 Q. Now, while this is going on, officers are 9 still yelling at him to give them his arms and -- 10 A. Right. 11 Q. -- and things like that, right? 12 A. And at that point Caton started punching 13 him. 14 Q. Okay. But -- 15 A. Or striking him. I -- 16 Q. Right. 17 A. I can't say punch. He -- he was striking 18 him. How, I don't know, but he was swinging. 19 Q. Okay. But my question is when -- when 20 Jorg is pulling Mr. Owensby's head back with his 21 arm, other officers are -- are yelling at Mr. 22 Owensby; is that right? 23 A. Uh-huh. 24 Q. You have to say yes or no.</p>	<p style="text-align: right;">Page 167</p> <p>1 A. I think it was like wet like around the 2 nose and on the forehead. I -- I -- it was 3 something wet on his forehead and the no-- around 4 the nose area. 5 Q. How could you see the forehead if Officer 6 Jorg's arm was around his forehead? 7 A. The part that I could see. When he had 8 him like this (demonstrating), when I sprayed him 9 and he moved back his arm, you know, just kind of -- 10 it on-- it didn't stay like right there the whole 11 time. 12 Like when he moved just like, you know, 13 just -- I didn't see the whole forehead, but like 14 you can just see like just a little bit of this or a 15 little of this right here like above the brow. 16 Q. All right. 17 A. And I said I didn't see the whole -- you 18 know, to see if he had a laceration or anything like 19 that. 20 Q. Once you sprayed Mr. Owensby, was there 21 any -- did Mr. Owensby make any sounds in response? 22 A. I don't remember him making no sound. 23 Only thing I remember is he made like a grimace 24 like, you know, like a -- like -- that's the only</p>

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1 reaction to the -- to the Mace that I remember him
2 doing.
3 Q. You noticed no coughing?
4 A. No.
5 Q. No groan or -- or any -- any sound from
6 him?
7 A. Not that I remember. Like I said, the
8 only thing I remember him doing is just making a
9 face. I don't remember any -- any noise.
10 Q. Once you finished administering the Mace
11 to Mr. Owensby, what happened next?
12 A. I went back down.
13 Q. To his arm?
14 A. To his arm.
15 Q. And were you then able to get his arm out?
16 A. Eventually, yes.
17 Q. How did you get it out?
18 A. Doing the same thing I was doing before.
19 Q. Which was?
20 A. Just pulling and tugging.
21 Q. At that point do you know whether or not
22 Officer Caton was able to get Mr. Owensby's left arm
23 out from under him?
24 A. Yes. At some point, yeah, he did, because

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1 we eventually got him handcuffed.
2 Q. How much time elapsed from after you had
3 sprayed Mr. Owensby with the Mace to the time that
4 you got his right arm out?
5 A. A matter of maybe -- maybe a minute or
6 less.
7 Q. How much time was this entire procedure
8 from the time that Mr. Owensby ran between you and
9 the other officers to the time the handcuffs were
10 put on?
11 A. I did know the answer to that, because I
12 saw it, but right now I don't remember even reading
13 it. I honestly, you know, saw from the incident the
14 exact time. But when it happened, it seemed like
15 it -- maybe three and a half minutes, four minutes,
16 something like that.
17 Q. The -- you get his right arm out. Officer
18 Caton, I guess, gets the left arm out?
19 A. Yes.
20 Q. What happens next?
21 A. He was cuffed.
22 Q. Who cuffed him?
23 A. I don't remember.
24 Q. Did Officer Caton ever leave -- well,

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1 while this is all going on, did Officer Caton ever
2 change his position?
3 A. Okay. When you say that, you mean as far
4 as in the act of getting him cuffed?
5 Q. Before getting him cuffed.
6 A. Okay.
7 Q. While -- while you are -- were on the
8 right side of Mr. Owensby --
9 A. Okay.
10 Q. -- then you went up to the head to
11 administer the Mace, in that time period was Officer
12 Caton still on the left side of Mr. Owensby?
13 A. He was on the left side of Mr. Owensby,
14 but I think at some point he went down to his legs
15 and then came back up.
16 Q. All right. Would you draw --
17 A. But I don't -- I don't -- I can't say that
18 for sure, because like I said, when I was moving up
19 here, from here to here, I wasn't really paying
20 attention to what he was doing.
21 Q. Okay. What leads you to believe at some
22 point he went down to the legs and then came back
23 up?
24 A. Because when -- hold on. Let me -- let me

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1 try to think about this for a second, because it's
2 been a little while.
3 I think it was. I think, now. I think
4 it was Hodge who asked for my PR-24 to try to do the
5 pain compliance. But he wasn't in position, he
6 wasn't in good position to do it. And if I'm not
7 mistaken, I think Caton had moved down and he ended
8 up with my PR-24, trying to get the pain compliance
9 with the legs, using my PR-24.
10 Q. When you got Mr. Owensby's right arm out
11 and put around to his back, were -- where was
12 Officer Caton?
13 A. He was back up on the left side.
14 Q. On the left side?
15 A. Yes.
16 Q. Officer -- I'm sorry. Mr. Owensby is then
17 handcuffed?
18 A. Yes.
19 Q. What happens then?
20 A. Officer Caton straddles him, with both
21 knees on either side of Mr. Owensby, and he started
22 punching him in the lower back.
23 Q. Was it above or below Mr. Owensby's
24 handcuffed arms?

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<p style="text-align: right;">Page 172</p> <p>1 A. Above.</p> <p>2 Q. Hands?</p> <p>3 A. Above.</p> <p>4 Q. Above?</p> <p>5 A. Yes.</p> <p>6 Q. Was -- when Officer Caton was straddling</p> <p>7 him, was Mr. Owensby's handcuffed wrists in front of</p> <p>8 Officer Caton? In other words, was he sitting on</p> <p>9 the handcuffs, or were the handcuffs in front of his</p> <p>10 crotch?</p> <p>11 A. I don't remember. I don't know if he was</p> <p>12 sitting on them or not.</p> <p>13 Q. Where in the back was Officer Caton</p> <p>14 striking Mr. Owensby?</p> <p>15 A. I just said the lower -- to me it looked</p> <p>16 like the lower back.</p> <p>17 Q. All right. Would you draw a circle of the</p> <p>18 area and put an S.</p> <p>19 A. (Witness complies.)</p> <p>20 Q. How many times did Officer Caton strike</p> <p>21 Mr. Owensby after he was handcuffed?</p> <p>22 A. About at least four to five times.</p> <p>23 Q. Were these punches, fist closed?</p> <p>24 A. Yes. I believe they were.</p>	<p style="text-align: right;">Page 174</p> <p>1 doing?" And then, you know, he stopped.</p> <p>2 Q. Was Caton saying anything while he was</p> <p>3 punching Mr. Owensby in the back after he was</p> <p>4 handcuffed?</p> <p>5 A. Yes.</p> <p>6 Q. What was he saying?</p> <p>7 A. "Stop resisting."</p> <p>8 Q. Was he resisting?</p> <p>9 A. No.</p> <p>10 Q. Because he was handcuffed?</p> <p>11 A. Yes.</p> <p>12 Q. And he wasn't moving or -- or saying</p> <p>13 anything?</p> <p>14 A. No.</p> <p>15 Q. Where was Officer Jorg while Officer Caton</p> <p>16 was punching Mr. Owensby in the back after he was</p> <p>17 handcuffed?</p> <p>18 A. Standing up.</p> <p>19 Q. Where?</p> <p>20 A. Up here by the head.</p> <p>21 Q. Okay.</p> <p>22 A. Or just -- like I said, I was looking at</p> <p>23 this guy (indicating) and -- but Jorg was here and</p> <p>24 he got up. I know he got up. He stood up when I</p>
<p style="text-align: right;">Page 173</p> <p>1 Q. Where were you when this was happening?</p> <p>2 A. I was standing up off to the right side,</p> <p>3 maybe about here (indicating).</p> <p>4 Q. Okay. Would you indicate that with a</p> <p>5 circle and an H in the middle.</p> <p>6 A. (Witness complies.)</p> <p>7 Q. Did Mr. Owensby react in any way to these</p> <p>8 four or five punches in the small of his back?</p> <p>9 A. No. I couldn't see his face, but as far</p> <p>10 as --</p> <p>11 Q. Did you -- did you hear anything?</p> <p>12 A. No.</p> <p>13 Q. Other than his body moving to the -- to</p> <p>14 the punches, did he move his body in any way in</p> <p>15 response to the punches?</p> <p>16 A. Not that I remember, because when -- when</p> <p>17 all this was taking place at this point, it's like</p> <p>18 in my mind it's supposed to be over. Okay? So</p> <p>19 to -- to see Caton punching him after he was</p> <p>20 handcuffed, that was like a shock. So I -- I mean,</p> <p>21 it was like --</p> <p>22 I was like, "What the hell is he doing?"</p> <p>23 I mean, I said that before, and that's -- because I</p> <p>24 said it out loud. I said, "What the hell is he</p>	<p style="text-align: right;">Page 175</p> <p>1 stood up.</p> <p>2 Q. All right.</p> <p>3 A. Or somewhere about.</p> <p>4 Q. Do you know -- do you know if Officer Jorg</p> <p>5 was standing either to the right or to the left of</p> <p>6 Mr. Owensby?</p> <p>7 A. I don't -- I can't recall where, exactly</p> <p>8 where he was standing, because I was watching -- I</p> <p>9 was looking at this person (indicating).</p> <p>10 Q. But Officer Jorg was standing somewhere</p> <p>11 around the head area?</p> <p>12 A. He was standing somewhere in close</p> <p>13 proximity to where he just got up from. So he was</p> <p>14 in -- in this area somewhere (indicating).</p> <p>15 Q. Did anyone else say anything to Officer</p> <p>16 Caton in response to seeing him punching Mr. Owensby</p> <p>17 in the small of the back after he was handcuffed?</p> <p>18 MR. HARDIN: Objection to the form of the</p> <p>19 question.</p> <p>20 A. I don't recall anybody saying anything</p> <p>21 directly to Caton about it.</p> <p>22 Q. What happened next?</p> <p>23 A. Caton and Jorg, they got Mr. Owensby up.</p> <p>24 Well, they -- as they were getting him up, it was a</p>

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<p style="text-align: right;">Page 176</p> <p>1 Golf Manor officer near, his car was near. Caton 2 yelled to the Golf Manor officer, "Can we put him in 3 your car?" And the Golf Manor officer said yes. 4 Caton and Jorg took Mr. Owensby over to 5 the car, and I was still standing around picking up, 6 you know, I picked up my Mace, and then checking my 7 belt to make sure I had everything. 8 And they -- as they took him over to the 9 car -- 10 Q. Let -- 11 A. -- I walked over to the -- okay. Go 12 ahead. 13 Q. Now let -- let me stop you. How did they 14 pick up Mr. Owensby? 15 A. By the arms. 16 Q. Okay. So he's handcuffed and they -- they 17 pick him up. Who is on the right side, who's on the 18 left side, if you know? 19 A. I don't know for sure, but I think Caton, 20 for the most part, he was on the left side. So I'm 21 going to assume that he stayed on the left side when 22 he -- when they picked him up and then Officer Jorg 23 was on the right. They picked him up and then they 24 took him to the car.</p>	<p style="text-align: right;">Page 178</p> <p>1 Q. All right. What happens next? 2 A. I was still standing -- I -- I was -- 3 after they get him over to the car, I walked toward 4 the car. And there was no need for me to be over 5 there, really, so I walked back over, same thing, 6 into the area, just looking down on the ground or 7 whatever, around the area where this just happened. 8 And I looked up and I looked across over 9 toward the Golf Manor police car and I saw the back 10 door open and I saw Officer Caton swinging. 11 Q. Now, what side of the Golf Manor car was 12 Officer Caton on? 13 A. Oh. The -- oh, God. I -- whichever side 14 Mr. Owensby's head was at, because that's the 15 side -- that -- the back door. He was at -- he was 16 standing at the back door where -- 17 Because they had Mr. Owensby laying across 18 the back seat. And the side where his head was 19 nearest to the door, that door was open and that's 20 the door -- that's where Officer Caton was standing. 21 Q. Was the other door open? 22 A. No. 23 Q. Do you know if the car was in -- from 24 where you were and where Officer Caton was, was the</p>
<p style="text-align: right;">Page 177</p> <p>1 Q. Did you see -- could you tell whether or 2 not Mr. Owensby was able to walk to the car? 3 A. Yes, I can tell. 4 Q. And what -- what did you see? 5 A. No. 6 Q. He could not walk? 7 A. No. He -- we -- he -- 8 Q. How -- 9 A. I don't -- if he could or couldn't, he was 10 not walking. He did not walk to the car. 11 Q. He was being carried? 12 A. Yes. 13 Q. His -- his feet were dangling? 14 A. Dragging. 15 Q. Okay. And the -- Officer Jorg and Caton 16 had Mr. Owensby by the arms? 17 A. Yes. 18 Q. Did anyone else assist in taking Mr. 19 Owensby to the Golf Manor cruiser? 20 A. There might have been another person over 21 there, but like I said, I didn't actually watch them 22 place him all the way in the car. So I don't know 23 if anybody might have got any hands on to help pull 24 him in or get him situated in the back of that car.</p>	<p style="text-align: right;">Page 179</p> <p>1 car between you two? In other words, were you 2 looking toward Officer Caton's face or were you 3 looking toward his back? 4 A. Hmm. Hmm. Right this minute I can't say 5 for -- for sure, but I do know that from where I was 6 standing, what I saw was the door was open and I can 7 see Caton making swinging motions. But the door was 8 between my vision and Mr. Owensby, so I could not 9 see him making contact, but I can see him swinging. 10 Q. When you say he was swinging, would you 11 either demonstrate or describe for me what you saw. 12 A. Him -- I'll demonstrate. 13 Q. Okay. 14 A. He was leaning in the doorway. He was 15 between the door and the inside of the car. He was 16 leaning in, and I could see him drawing back and 17 coming down, drawing back, coming down, throwing 18 either punches or open hand, I can't say, but he was 19 throwing blows. He was delivering blows. And 20 Mr. -- and the only thing he -- he could eith-- he 21 could have been punching Mr. Owensby or he could 22 have been punching the back seat. 23 Q. And do you know how many blows Officer 24 Caton administered?</p>

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<p style="text-align: right;">Page 184</p> <p>1 they --</p> <p>2 Q. And so that -- and that was your decision</p> <p>3 at that point?</p> <p>4 A. At that point when I found out that Mr.</p> <p>5 Owensby health had deteriorated, yes.</p> <p>6 Well, actually, wait a minute. Let me</p> <p>7 back up. When -- when that happened and then they</p> <p>8 took me off of my crowd control post and told me to</p> <p>9 sit in my car and don't talk to anybody, that's when</p> <p>10 I knew I was going down to be interviewed.</p> <p>11 So once we got down to CIS to be</p> <p>12 interviewed that night, or earlier that morning,</p> <p>13 into the morning, had they 2.26'ed me, I'd have told</p> <p>14 them everything.</p> <p>15 Q. What's that?</p> <p>16 A. That's where -- that's where they give us</p> <p>17 a 2.26, the department, where we're ordered to tell</p> <p>18 what happened but it's not used against us</p> <p>19 criminally.</p> <p>20 So I was waiting to be 2.26'ed when I got</p> <p>21 in --</p> <p>22 MR. WEISENFELDER: I'm sorry, to be what?</p> <p>23 THE WITNESS: 2.26'ed.</p> <p>24 MR. WEISENFELDER: What do you mean,</p>	<p style="text-align: right;">Page 186</p> <p>1 MR. HARDIN: Objection to the form of the</p> <p>2 question on putting information in that is not</p> <p>3 in evidence.</p> <p>4 A. I think it's about five to six minutes.</p> <p>5 Q. And during that time period what were you</p> <p>6 doing, in that five -- five-minute period?</p> <p>7 A. Of him being taken out of the car?</p> <p>8 Q. During the time period between you saw</p> <p>9 Officer Caton at -- at the car --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- and the time that Officer -- the time</p> <p>12 that Mr. Owensby was -- was taken out of the car.</p> <p>13 A. Okay. That's when it's -- I ended up on</p> <p>14 the post, just hold-- keeping the crowd back,</p> <p>15 because it was turning into a crime scene.</p> <p>16 Q. Were you present when Mr. Owensby was</p> <p>17 taken out of the Golf Manor cruiser?</p> <p>18 A. No.</p> <p>19 Q. When did you first know that Mr. Owensby</p> <p>20 was taken out of the Golf Manor cruiser?</p> <p>21 A. When I looked over and seen -- it was one</p> <p>22 of the officers, I think it was Hesse (sic), trying</p> <p>23 to administer -- it was either Hesse (sic) or Caton.</p> <p>24 It was a white officer. They were trying to</p>
<p style="text-align: right;">Page 185</p> <p>1 2.26'ed?</p> <p>2 A. So when I got called in to be interviewed,</p> <p>3 they didn't 2.26 me; they read me my rights. So</p> <p>4 after talking to FOP-appointed lawyers, I had</p> <p>5 told -- I told them everything, the whole story,</p> <p>6 the -- in the car, out the car, on the ground,</p> <p>7 handcuffed, getting punched. I told them</p> <p>8 everything. I was advised by FOP attorneys to</p> <p>9 invoke my Fifth Amendment right and remain silent.</p> <p>10 Q. Which you did?</p> <p>11 A. Yes.</p> <p>12 Q. Now, going back to the scene, after</p> <p>13 Officer -- you saw Officer Caton punching Mr.</p> <p>14 Owensby in the back seat of the Golf Manor cruiser,</p> <p>15 did you go over to check on the health of Mr.</p> <p>16 Owensby?</p> <p>17 MR. HARDIN: Objection to the form of the</p> <p>18 question.</p> <p>19 A. No.</p> <p>20 Q. How much time elapsed, to your best</p> <p>21 recollection, between the time that you saw Officer</p> <p>22 Caton striking Mr. Owensby in the back seat of the</p> <p>23 cruiser to the time that someone pulled Mr. Owensby</p> <p>24 out of the Golf Manor cruiser?</p>	<p style="text-align: right;">Page 187</p> <p>1 administer CPR.</p> <p>2 Q. Was this on the asphalt parking lot of the</p> <p>3 Sunoco station next to the Golf Manor car?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know whether or not Mr. Owensby was</p> <p>6 still handcuffed?</p> <p>7 A. I don't know.</p> <p>8 Q. What happened then? After you saw the</p> <p>9 officer trying to administer CPR, what happened</p> <p>10 next?</p> <p>11 A. Fire was -- Fire had been called and they</p> <p>12 responded. And then from that point it was like I</p> <p>13 was either on the crowd control post until I was</p> <p>14 told by a supervisor to get in my car and just stay</p> <p>15 there until I was escorted down to CIS.</p> <p>16 Q. Do you know what time you were escorted</p> <p>17 down to CIS?</p> <p>18 A. About 11:30, something like that, maybe --</p> <p>19 might have been closer to midnight. I'm not sure.</p> <p>20 Q. Did you know any of the fire/rescue people</p> <p>21 that came out to the scene?</p> <p>22 A. No.</p> <p>23 Q. Did you see or hear them say anything,</p> <p>24 the -- the fire and rescue people, when they arrived</p>

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<p style="text-align: right;">Page 252</p> <p>1 the third page in from the end is relevant in</p> <p>2 explaining what a 2.26 is, as referenced by</p> <p>3 Officer Hunter.</p> <p>4 Q. I want to show you, sir, what's previously</p> <p>5 marked as Exhibit 60. This is the Cincinnati Police</p> <p>6 Department use of force policy that was in effect in</p> <p>7 November of 2000, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And I want to direct your attention to</p> <p>10 page 3, please. You see in bold there is a word</p> <p>11 "Procedure" about a third of the way down the page?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Paragraph right above that says,</p> <p>14 "Following any use of force resulting in a citizen's</p> <p>15 injury, officers will ensure appropriate first aid</p> <p>16 is rendered immediately once the incident scene is</p> <p>17 stabilized."</p> <p>18 Now, we covered in -- in the first part of</p> <p>19 your deposition on November 6 that, in your opinion,</p> <p>20 the scene was stabilized once Officer -- once Mr.</p> <p>21 Owensby was handcuffed and placed in the back seat</p> <p>22 of the cruiser; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Am I correct in understanding that</p>	<p style="text-align: right;">Page 254</p> <p>1 six inches?</p> <p>2 A. Yes.</p> <p>3 Q. Is there a reason for that?</p> <p>4 A. Yes.</p> <p>5 Q. What was the reason?</p> <p>6 A. The reason was we was trying to get him to</p> <p>7 comply, and for me to spray him and not hit Officer</p> <p>8 Jorg with overspray, I had to be as close as I could</p> <p>9 to him. That was my reason. I ain't saying it's --</p> <p>10 it's not -- it's obvious that it wasn't procedurally</p> <p>11 correct, but that was my reason.</p> <p>12 Q. Number 5 says Exposed individuals sprayed</p> <p>13 with chemical irritant" -- or "Expose individuals</p> <p>14 sprayed with chemical irritant to fresh air. Give</p> <p>15 them an opportunity to rinse their face with plenty</p> <p>16 of clear, cool water." That was never provided to</p> <p>17 Mr. Owensby, was it?</p> <p>18 A. No. And water was never provided to us.</p> <p>19 Q. Well, nobody else was Mased, were they?</p> <p>20 A. No. Not us meaning us as far as if we got</p> <p>21 Mased on a scene. I mean, we didn't carry water</p> <p>22 around in our cruisers.</p> <p>23 Q. Okay. But you were at a convenience</p> <p>24 store?</p>
<p style="text-align: right;">Page 253</p> <p>1 no Cincinnati police officers immediately provided</p> <p>2 appropriate first aid for Mr. Owensby while he lay</p> <p>3 in the back seat of that cruiser; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. It wasn't until Sergeant Watts, five</p> <p>6 minutes or -- or later, ordered him removed from the</p> <p>7 cruiser that anyone began to consider first aid for</p> <p>8 Mr. Owensby, right?</p> <p>9 A. Yes.</p> <p>10 Q. Go to page 9 of that document, Exhibit 60.</p> <p>11 At paragraph C on that page it says Use of Chemical</p> <p>12 Irritant. And at number 4 under letter C it says,</p> <p>13 "When spraying chemical irritant, if possible spray</p> <p>14 five to ten feet" from the -- "from an individual.</p> <p>15 The target should be" the "individual's eyes, nose,</p> <p>16 and mouth."</p> <p>17 This was the -- remember I asked you</p> <p>18 earlier today the standard for the distance that an</p> <p>19 officer should apply chemical irritant. This was</p> <p>20 the standard that was in place on November 7, 2000;</p> <p>21 is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And you did not spray the irritant from</p> <p>24 five to ten feet but, rather, from approximately</p>	<p style="text-align: right;">Page 255</p> <p>1 A. Right.</p> <p>2 Q. There was water there, right?</p> <p>3 A. Yes, uh-huh.</p> <p>4 Q. There was -- there was bottled water in</p> <p>5 the refrigerators at the convenience store?</p> <p>6 A. Yes, uh-huh.</p> <p>7 Q. And no one ever went to try to offer Mr.</p> <p>8 Owensby any clear, cool water?</p> <p>9 A. No.</p> <p>10 Q. Had that been done once he was handcuffed,</p> <p>11 do you believe that officers would have immediately</p> <p>12 been able to determine that he was unconscious?</p> <p>13 A. Yes.</p> <p>14 Q. And if officers had immediately determined</p> <p>15 that he was unconscious, then the officers would</p> <p>16 have also then had an obligation to administer first</p> <p>17 aid?</p> <p>18 A. Yes.</p> <p>19 Q. Officer Hasse, who was present once Mr.</p> <p>20 Owensby was placed in the back seat of the cruiser,</p> <p>21 Officer Hasse was a trained EMT, was he not?</p> <p>22 A. I don't --</p> <p>23 Q. You don't know?</p> <p>24 A. I don't know.</p>

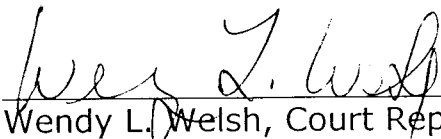
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AFFIDAVIT

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STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.


Wendy L. Welsh, Court Reporter

Sworn to before me this 27th day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.